

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERNESTO SANTIAGO #90304038)	
P.O. Box 8000)	
Bradford, PA 16701,)	
)	
Plaintiff,)	Civil Action No. 05-153E
)	
v.)	JUDGE McLAUGHLIN
)	MAGISTRATE JUDGE BAXTER
JAMES F. SHERMAN, WARDEN)	
AND BUREAU OF PRISON STAFF)	ELECTRONICALLY FILED
P.O. Box 5000)	
Bradford, PA 16701,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

AND NOW, come Defendants, James F. Sherman, Warden, and Bureau of Prison Staff at the Federal Correctional Institution at McKean (hereinafter referred to as "Defendants"), by and through their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul E. Skirtich, Assistant United States Attorney for said district and, pursuant to Federal Rules of Civil Procedure 12(b)(1), (6) and/or 56, respectfully move this Court to issue an Order dismissing, with prejudice, Plaintiff's Complaint since (1) this Court lacks jurisdiction over the subject matter and/or (2) Plaintiff has failed to state a claim upon which relief can be granted, or in the alternative, Defendant moves this Court to grant summary judgment in Defendants' favor for Plaintiff's failure to state a genuine issue of material fact.

A Memorandum of Law in support of this Motion is being filed simultaneously herewith, and the contents therein are incorporated by reference.

WHEREFORE, Defendants, James F. Sherman, Warden, and the Bureau of Prison Staff at the Federal Correctional Institution at McKean, respectfully request that the Court issue an Order dismissing Plaintiff's Complaint with prejudice or, in the alternative, grant summary judgment for Defendants and against Plaintiff with regard to this claim.

Respectfully Submitted,

MARY BETH BUCHANAN
UNITED STATES ATTORNEY

s/Paul E. Skirtich
PAUL E. SKIRTICH
Assistant U.S. Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7418
PA ID No. 30440

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Defendants' Motion to Dismiss, or in the alternative, Motion for Summary Judgment was electronically filed and served by first-class mail, postage-prepaid, on this 24th day of July, 2006, to the following:

Ernesto Santiago
Reg. No. 90304-038
United States Penitentiary
Lee County
Post Office Box 305
Jonesville, VA 24263-0305

s/Paul E. Skirtich
PAUL E. SKIRTICH
Assistant U.S. Attorney